



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

July 18, 2003

Mr. J. David Dodd, III
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2003-5003

Dear Mr. Dodd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184477.

The City of Allen (the "city"), which you represent, received a request for

[a]ll records related to the employment of [a named individual], including his human resources and Allen Public Library employment files; all complaints filed against [the individual] by other city employees, city residents or Allen Public Library patrons; all complaints against the city or its employees made by [the individual]; all letters, memorandums or e-mails discussing [the individual's] employment; all memorandums, e-mails or other correspondence about vandalism in the Allen Public Library parking lot or harassment of library employees.

You have submitted for our review nine documents, which you contend are excepted from disclosure under section 552.101 of the Government Code in conjunction with common law privacy. As you have not submitted any other documents concerning this individual's employment with the city, we assume that, to the extent additional responsive records exist, you have released them to the requestor. If you have not released any such records, you must do so at this time, to the extent such records exist and contain types of information not found to be confidential in this ruling. See Gov't Code §§ 552.301(a), .302. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses the common law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common law privacy but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision No. 600 (1992) (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure). In addition, this office has found that the following types of information are protected by privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

Having reviewed the submitted information, we find that no portion of it is protected by common law privacy; therefore none of the submitted information may be withheld under section 552.101 on this basis. *See* Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee’s qualifications and performance and circumstances of his resignation or termination), 405 at 2-3 (1983) (public has interest in manner in which public employee performs his job); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow).

We note, however, that some of the submitted information may be excepted from disclosure under section 552.117. Section 552.117(a)(1) of the Government Code excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of governmental body who timely request that such information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, pursuant to section 552.117(a)(1), the city must withhold the above-listed information for all current or former officials or employees who elected, prior to the city’s receipt of this request, to keep such information confidential. The city may not withhold such information under section 552.117 for anyone who did not make a timely election. We have marked the information that must be withheld if section 552.117 applies.

Finally, we note that the submitted information includes e-mail addresses of members of the public. Section 552.137 of the Government Code provides that “[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act].” However, this section does not apply to a government employee’s work e-mail address because such address is not that of the employee as a “member of the public” but is instead the address of the individual as a government employee. We further note that section 552.137 does not apply to a business’s general e-mail address or website address. Unless the individual members of the public have affirmatively consented to release of their e-mail addresses, the city must withhold the e-mail addresses that we have marked. See Gov’t Code § 552.137(b).

In summary, under section 552.117(a)(1), the city must withhold the home addresses and telephone numbers, social security numbers, and family member information of city officials or employees who made timely elections. The marked e-mail addresses must be withheld under section 552.137. The remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

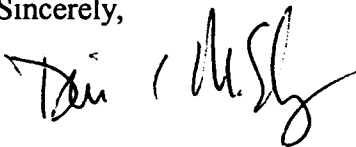
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Den C. McElroy", written in a cursive style.

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 184477

Enc. Submitted documents

c: Mr. Jason Heid
The Allen American
705 East Greenville Ave., Suite 100
Allen, Texas 75013
(w/o enclosures)